IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1016 OF 1983

Indian Overseas Bank ... Plaintiffs

Vs.

M/s. Trioka Textile Industries & Ors. Defendants

Mr. Parag Patil i/b. M/s. Thakordas & Madgavkar for Plaintiffs.

CORAM: S.K.SHAH,J.

DATE : 9th March, 2007.

P.C.

1. The Plaintiffs have filed affidavit of evidence and documents in support of the plaint.

2. None for the Defendants.

3. The suit of the plaintiff is for recovery of Rs.53,558.25 ps. together with further interest at 18% per annum. The Plaintifs had granted bill discounting facility to the defendant NO.1 firm of which defendants

Nos. 2,3 and 4 are partners. Defendant No.5 used to issue bills to defendant No.1 which defendant No.1 used to get discounting from the plaintiffs. As a result of discounting of the bills, the plaintiff used to credit that amount to the account of the defendant No.1. For encashment of those bills, the plaintiff used to place the bills to defendant no.5. However, the defendant no.5 failed to encash the bills. Therefore, the plaintiffs filed suit for recovery of the amount outstanding due in the account of defendant No.1.

4. The case of the plaintiff is that in November, 1979, the 1st defendant made an application to the plaintiffs for grant of facilities in the nature of Bills Disscounting Facility Usance as well as demand Bills for their business. By the said letter dated 28th December, 1979 the plaintiffs granted the Inand Usance Bills Discounting Facility on 60 days D.A. terms to be accompanied by accepted hundies, delivery challans and commercial Invoices, up country bills and to be accompanied by relevant RP/LR with sub-limit of Rs.10,000/- for clean supply of bills purchase subject to the plaintiffs' branch holding the list of drawees along with satisfactory credit reports from them upto the limit of Rs.75,000/- against 10% margin and carrying interest at the rate of 14% per annum as per g.M. Circular No.3 of 1978. It is also the case of the

plaintiffs that likewise the bills were executed by the 1st defendant on the 5th defendants under the facility and were purchased by the plaintiffs and which demand bills were liable to be discharged by the 5th defendants on account of them accepting the goodfs covered by the delivery challan. As per the case of the plaintiffs two bills bearing No. DBP 194 Invoice No. TTI 143/80 for Rs.10,260/-.

5. On 2nd May, 1980, the 1st defendants supplied various quantities of net guney bags containing Kemisige T.C.31 and 4 x 200 kgs. net barrel to the 5th defendants which was for Rs.24,948/- and accepted by the 5th defendants of 90 days site and the plaintiffs purchased the said hundi on 15.5.1980 and advanced a sum of Rs.24,948/- keeping 10% margin. The plaintiffs alleged the same were not repaid either by defendant nO.1 or defendant no.5 the amount with interest.

6. By Advocate’s niotice dated 27th September, 1982, the plaintiffs made demand of the said amount from the defendants. However, they failed to pay the anmount and filed the suit.

7. Defendant No.3 has filed the written statement. As regards other defednants, they did not file.

8. The following issues were framed in view of the pleadings of the parties to which I record my findings for the following reasons :-

	ISSUES	FINDINGS
1.	Whether Hundi dated 25th April 1980 was presented in acordance with the Negotiable Instruments Act to the 5th defendant and if not whether defendant no.1 to 4 and/or in any case defendant no.3 stands discharged from the liability in view of the provisions of Negotiable Instruments Act, 1882.	Yes.
2.	Whether notice of dishonour has been given to the defendant.	Yes.
3.	Whether the plaintiffs can claim interest at the rate of 18% p.a. as contended by the 3rd defendant in para 11 of the written statement.	Yes.
4.	Whether 3rd defndant is liable in the matter at all to the plaintiffs in view of the defence raised in the written statement or otherwise.	Yes.
5.	Whether the plaintifs prove that it is entitled to recover sum of Rs.53,558.25 together with further interest at the rate of 18% p.a. from the date of the suit till payment and/or realization as claimed in the plaint.	Yes.
6.	Reliefs, if any ?	As per order.

9. The plaintiffs have filed affidavit of evidence and

documents in support of the plaint. Besides oral evidence, the plaintiffs have filed the letter of sanction dated 28th December, 1979 at Exhibit "A", INvoice No.TTI 143/80 dated 15.4.1980, Exhibit "B", Delivery Challan, Exhibit "C" and demand Hundi dated 22nd April, 1980 at Exhibit "D". The plaintifs have also produced the letterdated 31st May, 1982 addressed to the 5th defendant by the plaintiff, the INvoice No. TTI 152/80 dated 2nd May, 1980 at Ex."F", delivery chalan at Exhibit "G" and Hundi dated 5th May 1980 at Exhibit "H". Therefore, in the two invocies the amount due to the plaintiffs was Rs.10,260 and Rs.24,948/-. It comes to Rs.35,208/-. With interest thereon a the rate of 18% per annum upto the date of the filing of the suit, the amount comes to Rs.53,558.25. The entire evidence has gone unchallenged. The plaintiffs are, therefore, entitled to decree.

10. Hence, the suit is decreed in terms of prayer (a). Decree be drawn accordingly.

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(S.K.SHAH,J.)